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SERVICE DATE – AUGUST 29, 2003

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SURFACE TRANSPORTATION BOARD

DECISION

STB Ex Parte No. 637 (Sub-No. 1)

REMOVAL OF DIVISIONS OF REVENUE REGULATIONS

AGENCY: Surface Transportation Board.

ACTION: Final rule.

SUMMARY: The Surface Transportation Board (Board) is removing its regulations concerning divisions of revenue proceedings because of changes in the statute and the infrequency of divisions of revenue complaints.

EFFECTIVE DATE: This rule is effective on September 28, 2003.

FOR FURTHER INFORMATION CONTACT: John Sado, (202) 565-1661. [Federal Information Relay Service for the hearing impaired: 1-800-877-8339.]

SUPPLEMENTARY INFORMATION: On May 6, 2003, at 68 FR 23947-48,¹ the Board published a notice of proposed rulemaking (NPR) in this proceeding seeking comments on the Board's proposal to remove the regulations at 49 CFR 1137.1 concerning divisions of revenue cases between carriers participating in a joint rate. The NPR indicated that the regulations were issued in response to the enactment of the Railroad Revitalization and Regulatory Reform Act of 1976 (4R Act). The 4R Act amended former section 15(6) of the Interstate Commerce Act by adding provisions that would expedite the handling of divisions of revenue cases. In response, the Interstate Commerce Commission (ICC) issued the original divisions of revenue rules in Expeditious Handling of Divisions of Revenue Cases, 353 I.C.C. 349 (1976).² As noted in the notice of proposed rulemaking, section 15(6) was

¹ A corrected notice was served on May 8, 2003, and published in the Federal Register on May 14, 2003 (68 FR 25859).

² The regulations were originally issued at 49 CFR 1109.5. They were later redesignated at
(continued...)

recodified at former 49 U.S.C. 10705, which was later modified by the Staggers Rail Act of 1980. Former section 10705 in general required that evidentiary proceedings in cases brought by complaint be completed in 9 months and a final decision be issued within 180 days after the close of the record.³

The NPR noted that, under the ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803 (1995), section 10705 had been modified. Although the Board retains jurisdiction over divisions of joint rates, the provision for the filing of a notice of intent and the deadlines for gathering evidence and issuing a final decision have been removed.

In proposing to remove the rules at section 1137.1, the Board stated that agency records indicated that there had not been a divisions of revenue complaint in over 20 years,⁴ and, accordingly, retaining the regulations appeared to be administratively inefficient. Furthermore, the rules contained the notice of intent and deadline provisions that no longer had a statutory basis. The Board noted that the general rules for filing complaints at 49 CFR 1111 appeared adequate for divisions complaints. Comments were sought on whether the rules should be retained, updated, or eliminated.

In response to the notice, the Board received one comment, from the Association of American Railroads (AAR). The AAR supports the proposal for the reasons expressed in the NPR. It submits that the Board's current general complaint rules are sufficient for any potential divisions complaint.

The regulations at 49 CFR 1137.1 concerning divisions of revenue cases will be removed. It would be administratively inefficient to retain rules that are outdated and have not been used in over 20 years where general complaint rules are in place. The only party responding to the NPR supports the elimination of the rules. Finally, parties in a prospective complaint can propose on a case-by-case basis to use any evidence they consider relevant, including the evidence referenced in the former guidelines.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

²(...continued)

49 CFR 1137.1 in Revision of the Rules of Practice, Ex Parte No. 55 (Sub-No. 55), 47 FR 49534 (Nov. 1, 1982).

³ The ICC subsequently modified the regulations in section 1137.1 in Revised Procedures for Divisions of Revenue Cases, 367 I.C.C. 353 (1983).

⁴ Increases in Freight Rates and Charges—1973, 365 I.C.C. 193 (1981).

List of Subjects

49 CFR Part 1137

Administrative practice and procedure, Railroads.

Decided: August 25, 2003.

By the Board, Chairman Nober.

Vernon A. Williams
Secretary

APPENDIX

For the reasons set forth in the preamble, the Surface Transportation Board amends part 1137, of title 49, chapter X, of the Code of Federal Regulations as follows:

Part 1137 [Removed]

1. Part 1137 consisting of §1137.1 is removed.